

### **REMARKS/ARGUMENTS**

With this Amendment, Applicant adds new claims 22 and 23. Therefore, claims 1, 3-8, 10, 12-17 and 21-23 are pending in the application. Based on the following remarks, Applicant respectfully requests reconsideration of the application and allowance of the claims.

#### **I. Rejection of Claims 1, 5, 10, 14, and 21 Under 35 U.S.C. § 103(a)**

Claims 1, 5, 10, 14, and 21 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Wiser et al. (U.S. Patent No. 6,385,596; hereinafter “Wiser”) in view of Gongwer et al. (U.S. Patent No. 6,138,120; hereinafter “Gongwer”) in view of Speicher (U.S. Patent Publn. No. 2004/0260792; hereinafter “Speicher”) in view of Pallakoff (U.S. Patent No. 6,269,343; hereinafter “Pallakoff”) further in view of Krisknaswamy (U.S. Patent No. 5,867,494; hereinafter “Krisknaswamy”).

Claim 1 recites, *inter alia*, “[a] method comprising: receiving over a network a first request to encode one or more media program files; for each media program file to be encoded, receiving a selection of one or more encoding formats for encoding the media program file, wherein *the selection is selected from at least a first encoding format* with a first coder/decoder (“CODEC”) and *a second encoding format* with a second CODEC *that differs from the first CODEC*, wherein the first encoding format and the second encoding format can be applied to the media program file, and wherein the first request and the *selection are received from a client* that is connected to the network.” The method further requires that ... “querying the client as to whether the encoded media program is to be deleted, hosted, or transmitted” and “if the client, in a second request, requests hosting of the one or more encoded media files, automatically hosting the one or more encoded media files on a hosting server.” “[T]he *hosting server is configured to allow selective access by visitors to the one or more encoded media files over the network*, as determined by the client, wherein *the hosting server is selected, based on the selected encoding format, from a group of dedicated hosting servers each hosting a different type of encoding format*.” “[T]he client is enabled to choose a hosting server that is maintained by an entity different from that which encodes the media program ....” The method further requires that “credits are purchased by an end-user” and a predetermined number of credits are associated

with each e-commerce transaction associated with remote servicing of the media program; and pricing of said credits purchased by said end-user are inversely proportionate to a number of credits purchased.”

Applicant respectfully submits that the combination of Wiser, Gongwer, Speicher, Pallakoff and Krisknaswamy does not teach or suggest all of the above features of claim 1. In rejecting claim 1, the Examiner continues to rely on column 10, lines 51-55 of Wiser as disclosing “receiving over the network a first request to encode one or more media programs files; [f]or each media program file to be encoded, receiving a selection of one or more encoding formats for encoding the media program file, wherein the first request and the selection are received from a client that is connected to the network ...” (See pg. 2 of the Office Action) Applicant again disagrees.

As pointed out in the Amendment filed February 19, 2008, in contrast to claim 1, Wiser merely relates to a computer implemented online music distribution system which provides secure delivery of audio data and related media over a public communications network. (Col. 1, lines 5-9 & Abstract of Wiser) The cited portion and indeed all of Wiser, alone or in combination with Gongwer, Speicher, Pallakoff and Krisknaswamy, at best, discloses that “[i]n order to obtain media data files 200 for distribution, ... authoring tools 102 are used by individual artists to create ... audio data and associated media data in the media data files 200 to be delivered over the network to [a] content manager 112 for storage in the master media data file system 120.” According to Wiser, “[i]nformation descriptive of the master media data files is extracted by the content manager 112 from each of the master media data files and stored in the media information database 106.” (Col. 10, lines 51-55 of Wiser) Moreover, column 7, lines 4-14 of Wiser, also relied upon by the Examiner<sup>1</sup>, at best, discloses that each media data file 200 contains at least one media data chunk 206” which “includes a watermarked, compressed, and encrypted, audio image 208.” (See also FIG. 2 of Wiser) Wiser explains that the “[e]ach of these images 208 is processed to provide different quality levels on playback using different sampling rates and compression levels.” Additionally, according to Wiser, “[e]ach image 208 encodes either the entire song file or a portion thereof.”

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<sup>1</sup> See pg. 3 of the Office Action.

Nowhere in the cited portions or indeed any portions of Wiser, alone or in combination with Gongwer, Speicher, Pallakoff and Krisknaswamy, is there any mention, teaching or suggestion relating to “*receiving over the network a first request to encode one or more media program files*” “for” each media data file 200 “to be encoded, receiving a selection of one or more encoding formats for encoding” the media data file 200, “wherein the first request and *the selection are received from a client* that is connected to the network, as required by claim 1. As pointed out on page 10 of the Amendment filed February 19, 2008, Wiser is simply altogether silent and does not contemplate receipt of any selection of one or more encoding formats for encoding the media data file 200, as required by claim 1. And there certainly is no mention, teaching or suggestion relating to receiving any request to encode one or more media data files 200 and a selection of one or more encoding formats for encoding the media data file 200 “*from a client* that is connected to the network,” as claimed. Nowhere in Wiser is there any mention, teaching or suggestion that the authors therein have any control over an encoding format used to encode the media data files produced. In contrast to claim 1, Wiser does not contemplate provisions for accommodating different encoding formats to encode the media data files disclosed therein that are received from a client. Including an image 208 within a media data file 200 (See FIG. 2 of Wiser) which “encodes either the entire song or a portion thereof” (Col. 7, lines 9-10) is not tantamount to receiving any request to encode the media data file 200 based on a selection from one or more different encoding formats.

In this regard, Applicant again submits that Wiser, alone or in combination with Gongwer, Speicher, Pallakoff and Krisknaswamy, is simply being given credit for more than it actually discloses. Applicant notes that the Examiner relied the same portions of Wiser in the Office Action dated March 21, 2008 (See pgs. 2-3 of the Office Action dated March 21, 2008) as allegedly disclosing the same recitations of claim 1 in the current Office Action. MPEP § 707.07(f) requires that “[w]here the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant’s argument and answer the substance of it.” (emphasis added) In contrast to the requirements of MPEP § 707.07(f), the Examiner has not responded to Applicant’s arguments set forth above which were discussed at length on pages 9 and 10 of the Amendment filed February 19, 2008. Rather, in the *Response to Arguments*

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section, the Examiner merely makes the sweeping assertion that “in view of the new grounds of rejection” “Applicant’s arguments ... are moot” without providing any substantive explanation whatsoever with regards to the above arguments. (See pg. 9 of the Office Action) Accordingly, Applicant submits that the Examiner’s arguments remain rebutted, and independent claim 1 is patentable *at least* for the reasons set forth above which were also previously of record.

To the extent that the Examiner persists in the rejection, Applicant requests the Examiner to specifically point out what is being relied upon in Wiser as allegedly corresponding to the claimed client from which a first request and selection of one or more different encoding formats is received.

Applicant again points out that the Examiner correctly concedes that “Wiser fails to teach if the client, in a second request, requests hosting of the one or more encoded media files, automatically hosting the one or more encoded media files on a hosting server ... wherein the hosting server is configured to allow selective access by visitors to the one or more encoded media files over the network, as determined by the client.” (See pg. 3 of the Office Action) However, the Examiner relies on Gongwer to make up for the deficiencies of Wiser. In particular, the Examiner continues to rely on column 1, lines 45-56 of Gongwer as allegedly disclosing features of claim 1. (See *id.*) Applicant submits that Gongwer simply does not make up for the deficiencies of Wiser.

Rather, the cited portion and indeed all of Gongwer, alone or in combination with Wiser, Speicher, Pallakoff and Krisknaswamy, at best, discloses that a client may “connect[] to a data server and create[] a session specifying that the session be brand new and that the new session can be shared by future client connections.” (Col. 1, lines 45-56 of Gongwer) Gongwer, also explains that the client may “run[] a query to specify the subset of data to be worked with” and calculate some new data values based on formulas. The cited portion of Gongwer further describes that “[t]he originating client ... desires to use another independent client to ... validate ... newly calculated data values before committing those data values as updates to [a] database.” (See *id.*)

As pointed out in the Amendment filed February 19, 2008, in view of the foregoing, nowhere in Gongwer, alone or in combination with Wiser, Speicher, Pallakoff and

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Krisknaswamy is there any mention, teaching or suggestion relating to any client therein that requests hosting of one or more encoded media files and which automatically hosts the one or more encoded media files on a hosting server, wherein the hosting server is configured to allow selective access by visitors to the one or more encoded media files over the network, *as determined by the client*, as required by claim 1. Gongwer simply does not disclose any client therein that requests hosting of multiple encoded media files and which automatically hosts encoded media files on a hosting server and there certainly is no mention, teaching or suggestion relating to any hosting server that allows selective access to encoded media files based on a determination by the client, as required by claim 1. A client connecting to a data server to create a session and specifying that the session be shared by future client connections, as described in column 1, lines 45-56 of Gongwer, relied upon by the Examiner, is not tantamount to any client making a second request for hosting an encoded media file on a hosting server that is configured to allow visitors access to the media files based on a determination by the client, as claimed. Contrary to the requirements of MPEP § 707.07(f), the Examiner has not responded in any manner to Applicant's arguments set forth above and discussed at length on pages 10-11 of the Amendment filed February 19, 2008. For at least the above reasons, which were previously of record, the combination remains deficient and does not teach or suggest all of the features of claim 1.

Applicant again notes that the Examiner correctly concedes that Wisner and Gongwer do not teach or suggest all of the features of claim 1, but the Examiner relies on Speicher and Pallakoff as disclosing some of the features of claim 1, which Wisner and Gongwer fail to disclose. Specifically, the Examiner relies on paragraphs [0070]-[0073] and [0127] of Speicher for the proposition that it "teaches the selected encoding format being selected from a first encoding format with a first coder/decoder ("codec") and a second format with a second codec that differs from the first codec, wherein the first encoding format and the second encoding format can be applied to the media program file." (See pg. 4 of the Office Action; See also pg. 4 of the Office Action dated March 21, 2008) And the Examiner relies on Pallakoff for the proposition that it "teaches credits are purchased by an end-user; a predetermined number of credits are associated with each e-commerce transaction associated with remote servicing of the

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media program; and [p]ricing of said credits purchased by said end-user are inversely proportionate to a number of credits purchased.” (See *id.*)

Applicant submits that Speicher, alone or in combination with Gongwer, Pallakoff and Krisknaswamy, at best, discloses an Internet Web Server (IWS) which may “determine[] if conversion of audio files are needed 1506” and may use RealAudio Server software to convert .Wav files and VDOLive Server software to allow a video clip to be converted to a VDOLive .VDO format. (Paragraphs [0071]-[0073] and [0076] of Speicher) Nowhere in Speicher, alone or in combination, is there any mention, teaching or suggestion relating to receipt of a selection of one or more first and second encoding formats that are different, as claimed. Rather, Speicher, at best, discloses that an IWS determines if conversion is needed and if so, then the IWS performs the conversion, which is not tantamount to receiving any selection of an encoding format among first and second encoding formats that are different from each other, as required by claim 1. For this additional reason, the combination is deficient and does not teach or suggest all of the features of claim 1.

Applicant points out that the Examiner relied on column 3, lines 20-65 of Pallakoff in the Office Action dated November 29, 2006 as allegedly disclosing “credits are purchased by an end-user; a predetermined number of credits are associated with each e-commerce transaction associated with remote servicing of the media program; and [p]ricing of said credits purchased by said end-user are inversely proportionate to a number of credits purchased.” (See pg. 4 of the Office Action dated November 29, 2006) However, Applicant points out that the Examiner correctly conceded in the next Office Action dated May 25, 2007 that neither Wiser, Gongwer, Speicher and Pallakoff, alone or in combination taught or suggested “wherein credits are purchased by an end-user” and a “predetermined number of credits are associated with each e-commerce transaction associated with remote servicing of the media program; and pricing of said credits purchased by said end-user are inversely proportionate to a number of credits purchased,” as required by claim 1. (See the *Allowable Subject Matter* section on pg. 5 of the Office Action dated May 25, 2007) As such, Applicant again submits that Pallakoff, alone or in combination, still suffers from the same deficiencies indicated in the May 25, 2007 Office Action since in the current Office Action, Pallakoff is being relied upon as allegedly disclosing the same

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recitations of claim 1 that were rejected in the November 29, 2006 Office Action.<sup>2</sup> Nowhere in the cited portion or any portion of Pallakoff, alone or in combination, is there any mention, teaching or suggestion relating to *any credits* that are purchased by an end-user in which the *pricing of the credits are inversely proportionate to a number of credits* purchased, as claimed.

Additionally, the Examiner correctly concedes that Wiser, Gongwer, Speicher and Pallakoff do not teach or suggest all of the features of claim 1. But the Examiner now relies on Krisknaswamy to make up for the deficiencies of Wiser, Gongwer, Speicher and Pallakoff. Applicant disagrees. In particular, the Examiner asserts that Krisknaswamy “teaches querying the client as to whether the encoded media programs is to be deleted, hosted, or transmitted and wherein the hosting server is selected, based on the selected encoded format, from a group of dedicated hosting servers each hosting a different type of encoding format, and wherein the client is enabled to choose a hosting server that is maintained by an entity different from that which encodes the media program.” (See pg. 5 of the Office Action) Even assuming *arguendo* (an assumption with which Applicant disagrees) that Krisknaswamy discloses servers which each store video content in a different format, the combination still does not teach or suggest all of the features of claim 1. Nowhere in Krisknaswamy, alone or in combination, is there any mention, teaching or suggestion relating to any client that is enabled to choose a hosting server that is maintained by an entity different from an entity which encodes the media program, as required by claim 1. There is no mention, teaching or suggestion in Krisknaswamy relating to any client that is able to make a choice regarding a hosting server on the basis of the hosting server being maintained by an entity that is different from the entity that encoded video content. Krisknaswamy is altogether silent and does not contemplate any client that is able to choose among a hosting server on the basis of differing entities maintaining the hosting server and which encode video content, as required by claim 1.

MPEP § 2143 requires that to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a) the Examiner must show that the prior art references, when combined, teach or suggest all of the claim limitations. Here, the combination simply does not teach or suggest each

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<sup>2</sup> In which the Examiner asserted the “examiner’s statement of reasons for allowance: The prior art fails to teach, individually or in combination ... “[p]ricing of said credits purchased by said end-user are inversely proportionate to a number of credits purchased,” in light of applicant’s argument filed in 3/28/07.”

and every feature of claim 1 for the at least the foregoing reasons.

As such, claim 1 remains patentable for at least the reasons set forth above and for at least some of the reasons indicated by the Examiner on page 5 of the Office Action dated May 25, 2007. (See pg. 5 "*Allowable Subject Matter*") In this regard, notwithstanding the prior rejections of the claims as being obvious over a combination of Wiser, Gongwer, Speicher and Pallakoff, the Office Action dated May 25, 2007 recognized Wiser, Gongwer, Speicher and Pallakoff to be deficient and, consequently, found the claims to be allowable. Krisknaswamy, as noted above, simply does not make up for what the Wiser, Gongwer, Speicher and Pallakoff references lack, alone or in combination, and is equally deficient. As such, the combination of *numerous* references is deficient and does not teach or suggest all of the features of claim 1 and there is no expressed or implied motivation to combine the references in the manner contended by the Examiner. Indeed any such basis for combining the numerous references is tenuous at best. Applicant therefore respectfully requests the Examiner to reconsider and withdraw the rejections of claim 1 and its dependent claims 3-8.

Since claims 10 and 21 contain features that are analogous to, though not necessarily coextensive with, the features recited in claim 1, Applicant submits that claim 10 and its dependent claims 12-17 as well as independent claim 21 are patentable at least for reasons analogous to those submitted for claim 1.

## **II. Rejection of Claims 3-4 & 12-13 under 35 U.S.C. § 103(a)**

Claims 3-4 and 12-13 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Wiser, Gongwer, Speicher, Pallakoff, Krisknaswamy, and further in view Pajak (U.S. Patent No. 5,065,347; hereinafter "Pajak"). Applicant respectfully traverses this rejection for at least the following reasons.

As discussed above, Wiser, Gongwer, Speicher, Pallakoff and Krisknaswamy, alone or in combination, are deficient vis-à-vis independent claims 1 and 10 and Pajak does not make up for the deficiencies of Gongwer, Speicher, Pallakoff and Krisknaswamy and is not cited for such. Accordingly, claims 3-4 and 12-13 are patentable at least by virtue of their respective dependencies from claims 1 and 10. Applicant therefore respectfully requests the Examiner to



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reconsider and withdraw the § 103(a) rejection of claims 3-4 and 12-13.

### **III. Rejection of Claims 6 & 15 Under 35 U.S.C. § 103(a)**

Claims 6 and 15 are rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Wiser, Gongwer, Speicher, Pallakoff, Krisknaswamy, and further in view of Cameron (U.S. Patent Application No. 6,685,094 hereinafter “Cameron”) and Sauerwine (U.S. Patent Application No. 5,421,620; hereinafter “Sauerwine”). Applicant respectfully traverses this rejection for at least the following reasons.

As mentioned above, Wiser, Gongwer, Speicher, Pallakoff and Krisknaswamy, alone or in combination, are deficient vis-à-vis independent claims 1 and 10 and Sauerwine and Cameron do not make up for the deficiencies of Gongwer, Speicher, Pallakoff and Krisknaswamy and are not cited for such. Accordingly, claims 6 and 15 are patentable at least by virtue of their respective dependencies from claims 1 and 10. Applicant therefore respectfully requests the Examiner to reconsider and withdraw the § 103(a) rejection of claims 6 and 15.

### **IV. Rejection of Claims 7-8 and 16-17 Under 35 U.S.C. § 103(a)**

Claims 7-8 and 16-17 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Wiser, Gongwer, Speicher, Pallakoff, Krisknaswamy and further in view further in view of Vigneaux et al. (“Vigneaux”, U.S. Patent No. 5,852,435; hereinafter “Vigneaux”). Applicant respectfully traverses this rejection for at least the following reasons.

As described above, Wiser, Gongwer, Speicher, Pallakoff and Krisknaswamy, alone or in combination, are deficient vis-à-vis independent claims 1 and 10 and Vigneaux does not make up for the deficiencies of Gongwer, Speicher, Pallakoff and Krisknaswamy and is not cited for such. Accordingly, claims 7-8 and 16-17 are patentable at least by virtue of their respective dependencies from claims 1 and 10. Applicant therefore respectfully requests the Examiner to reconsider and withdraw the § 103(a) rejection of claims 7-8 and 16-17.

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## **V. New Claims**

Applicant herein adds new claims 22 and 23 to add more varied protection of Applicant's invention as described in the specification. In addition to their dependency from independent claim 21, Applicant submits that claims 22 and 23 are independently patentable given that the cited references, alone or in combination, do not teach or suggest the features of these claims.

## **VI. Conclusion**

In view of the foregoing remarks, Applicant respectfully submits that all of the claims of the present application are in condition for allowance. It is respectfully requested that a Notice of Allowance be issued in due course. Examiner Ke is encouraged to contact Applicant's undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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